

STATE OF NEW JERSEY  
COUNCIL ON AFFORDABLE HOUSING  
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

REPAYMENT MORTGAGE  
Contains Deed Restrictions

EASTERN TITLE AGENCY, INC.  
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(908) 389-0009 • FAX 389-9023

MORTGAGE IS SUBORDINATE TO A FIRST PURCHASE MONEY MORTGAGE OR REFINANCING

Prepared by:

LINDA WAGNER

INEZ HURSTON, UNMARRIED

This Mortgage made on FEBRUARY 28, 1994 between CITY OF NEWARK (referred to as "Borrower") and CITY OF NEWARK (referred to as the "Authority"), which Authority is an Instrumentality of CITY OF NEWARK (referred to as the "Municipality")

REPAYMENT MORTGAGE NOTE

In consideration of value received by the Borrower in connection with the Property (described below) purchased by the Borrower, the Borrower has signed a note dated FEBRUARY 28, 1994. The Borrower promises to pay the amounts due under the Note and to abide by all promises contained in the Note.

MORTGAGE AS SECURITY

This Mortgage is given to the Authority as security for the payment due and the performance of all promises under the Note. The Borrower mortgages the real estate owned by the Borrower described as follows (referred to as the "Property"):

All of the land located in the CITY of NEWARK  
County of ESSEX and State of New Jersey, specifically described as follows:  
Street Address: 49A WICKLIFFE STREET  
City: NEWARK Zip: 07103 Block No.: 406 Lot No.: 22.19

Also more particularly described as:

Received & Recorded  
Register's Office  
Essex County, NJ  
JUN 17, 02:33 PM '94  
Larrie W. Stalks  
894002032120582866

Together with:

- All buildings and other improvement that now are or will be located on the Property.
- All fixtures, equipment and personal property that now are or will be attached to or used with the land, buildings and improvements of or on the Property.
- All rights which the Borrower now has or will acquire with regard to the Property.

BORROWERS ACKNOWLEDGEMENTS

- The Borrower acknowledges and understands that:
  - Municipalities within the State of New Jersey are required under the Fair Housing Act and regulations adopted under the authority of the Act to provide for their fair share of housing that is affordable to households of low and moderate income; and
  - The Property which is subject to this Mortgage has been designated as housing which must remain affordable to low and moderate income households for at least thirty years unless a shorter time period is authorized in accordance with rules established by any agency having jurisdiction (the "restricted period"); and
  - To ensure that such housing, including this Property, remains affordable to low and moderate income households during the restricted period, an Affordable Housing Agreement has been executed by the Borrower that constitutes covenants running with the land with respect to the Property and the Municipality has adopted procedures and restrictions governing the resale of the Property and ; and
  - The Authority to which the Property is mortgaged has been designated by the Municipality to administer the procedures and restrictions governing such housing.
- The Borrower also acknowledges and understands that the Property has been purchased at a restricted sales price that is less than the fair market value of the Property.

BORROWER'S PROMISES

In consideration for the value received in connection with the purchase of the Property at a restricted sales price, the Borrower agrees as follows:

- The Borrower will comply with all of the terms of the Note and this Mortgage which includes:
  - Within the restricted period starting with the date the Borrower

obtained title to the Property, the Borrower shall not sell or transfer title to the Property for an amount that exceeds the maximum allowable resale price as established by the Authority. In the event of breach of this promise, Borrower hereby assigns all proceeds in excess of the maximum allowable resale price to the Authority, said assignment to be in addition to any and all rights and remedies the Authority has upon default.

b) At the first non-exempt transfer of title of the Property after the ending date of the restricted period, the Borrower agrees to repay 95% of the incremental amount between the maximum allowable resale price and the fair market selling price which has accrued to the Property during the restricted period to the Authority.

2. The Borrower warrants title to the premises (N.J.S.A. 46:9-2). This means the Borrower owns the Property and will defend its ownership against all claims.

3. The Borrower shall pay all liens, taxes, assessments and other governmental charges made against the Property when due. The Borrower will not claim any credit against the principal and interest payable under the Note and this Mortgage for any taxes paid on the Property.

4. The Borrower shall keep the Property in good repair, neither damaging nor abandoning it. The Borrower will allow the Authority to inspect the Property upon reasonable notice.

5. The Borrower shall use the Property in compliance with all laws, ordinances and other requirements of any governmental authority.

CONTROLS ON AFFORDABILITY

The procedures and restrictions governing resale of the Property have been established pursuant to the Fair Housing Act and the regulations adopted under the authority of the Act, (all collectively referred to as "Controls on Affordability"). Reference is made to the Controls on Affordability for the procedure in calculating the

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maximum allowable resale price, the method of repayment described in Item 1(b) of the section entitled "Borrower's Promises", and the definition of a "restricted sale" for purposes of determining when the Affordability Controls are applicable, and the determination of the restricted period of time.

#### RIGHTS GIVEN TO LENDER

The Borrower, by mortgaging the Property to the Authority, gives the Authority those rights stated in this Mortgage, all rights the law gives to lenders, who hold mortgages, and also all rights the law gives to the Authority and/or Municipality under the Affordability Controls. The rights given to the Authority and the restrictions upon the Property are covenants running with the land. The rights, terms and restrictions in this Mortgage shall bind the Borrower and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. Upon performance of the promises contained in the Note and Mortgage, the Authority will cancel this Mortgage at its expense.

#### DEFAULT

The Authority may declare the Borrower in default on the Note and this Mortgage if:

1. The Borrower fails to comply with the provisions of the Affordable Housing Agreement;
2. The Borrower fails to make any payment required by the Note and this Mortgage;
3. The Borrower fails to keep any other promise made in this Mortgage;
4. The ownership of the Property is changed for any reason without compliance with the terms of the Note and Mortgage;
5. The holder of any lien on the Property starts foreclosure proceedings; or
6. Bankruptcy, insolvency or receivership are started by or against any of the Borrowers.

#### AUTHORITY'S RIGHTS UPON DEFAULT

If the Authority declares that the Note and this Mortgage are in default, the Authority shall have, subject to the rights of the First Mortgagee, all rights given by law or set forth in this Mortgage.

#### NOTICES

ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES GIVEN IN THIS MORTGAGE. ADDRESS CHANGES MAY BE MADE UPON NOTICE TO THE OTHER PARTY.

#### NO WAIVER BY AUTHORITY

The Authority may exercise any right under this Mortgage or under any law, even if the Authority has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. The Authority does not waive its right to declare the Borrower in default by making payments or incurring expense on behalf of the Borrower.

#### EACH PERSON LIABLE

This Mortgage is legally binding upon each Borrower and all who succeed to their responsibilities (such as heirs and executors). The Authority may enforce any of the provisions of the Note and this Mortgage against any one or more of the Borrowers who sign this Mortgage.

#### SUBORDINATE MORTGAGE

The lien on this Mortgage is inferior to and subject to the terms and provisions of the First Purchase Money Mortgage executed contemporaneously herewith or any subsequent refinancing.

#### NO ORAL CHANGES

This Mortgage can only be changed by an agreement in writing signed by both the Borrower and the Authority.

#### SIGNATURES

The Borrower agrees to the terms of this Mortgage by signing below.

#### ACKNOWLEDGEMENT

Borrower acknowledges receipt of a true copy of this mortgage at no charge.

Dated: FEBRUARY 28, 1994

ATTEST: Lisa Hendricks-Richardson  
LISA HENDRICKS-RICHARDSON, ESQUIRE

By: Inez Hurston  
Signature (Borrower) INEZ HURSTON

\_\_\_\_\_  
Signature (Co-Borrower)

STATE OF NEW JERSEY )

)ss

COUNTY OF MONMOUTH )

BE IT REMEMBERED, that on this 28TH day of FEBRUARY, 1994, before me, the subscriber, Lisa Hendricks-Richardson personally appeared INEZ HURSTON, UNMARRIED

who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction, that he/she is the Borrower (Co-Borrower) named in the within instrument; that is the Repayment Mortgage for the described Property; that the execution, as well as the making of this instrument, has been duly authorized and is the voluntary act and deed of said Owner.

Sworn to and subscribed before me,  
the date aforesaid.

Lisa Hendricks-Richardson  
LISA HENDRICKS RICHARDSON  
ATTORNEY-AT-LAW  
535 MARTIN LUTHER KING, JR. BLVD.  
NEWARK, NEW JERSEY 07102

## AFFORDABLE HOUSING AGREEMENT

Prepared by:

LINDA WAGNER

## A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This AGREEMENT is entered into on this 28TH day of FEBRUARY, 1994 between INEZ HURSTON, UNMARRIED owner of the properties designated in Section II PROPERTY DESCRIPTION, hereafter "OWNER", and New Jersey Department of Community Affairs hereafter "AUTHORITY", which Authority is an instrumentality of CITY OF NEWARK (referred to as the "MUNICIPALITY"), both parties having agreed that the covenants, conditions and restrictions contained herein shall be imposed on the Affordable Housing unit described in Section II PROPERTY DESCRIPTION for a period of at least TWENTY years beginning on FEBRUARY 28, 1994 and ending at the first non-exempt transfer of title after FEBRUARY 28, 2004 unless extended by municipal resolution as described in Section III TERM OF RESTRICTION.

WHEREAS, municipalities within the State of New Jersey are required by the Fair Housing Act (P.L. 1985, c.222) hereinafter "Act", to provide for their fair share of housing that is affordable to households with low or moderate incomes in accordance with provisions of the Act; and

WHEREAS, the Act requires that municipalities ensure that such designated housing remains affordable to low and moderate income households for a minimum period of at least 6 years; and

WHEREAS, the Act establishes the Council on Affordable Housing (hereinafter "Council") to assist municipalities in determining a realistic opportunity for the planning and development of such affordable housing; and

WHEREAS, pursuant to the Act, the housing unit (units) described in Section II PROPERTY DESCRIPTION hereafter and/or an attached Exhibit A of this Agreement has (have) been designated as low and moderate income housing as defined by the Act; and

WHEREAS, the purpose of this Agreement is to ensure that the described housing unit(s) remain(s) affordable to low and moderate income eligible households for that period of time described in Section III TERM OF RESTRICTION.

NOW, THEREFORE, it is the intent of this Agreement to ensure that the affordability controls are contained directly in the property deed for the premises and incorporated into and recorded with the property deed so as to bind the owner of the described premises and notify all future purchasers of the housing unit that the housing unit is encumbered with affordability controls; and by entering into this Agreement, the Owner of the described premises agrees to restrict the sale of the housing unit to low and moderate income eligible households at a maximum resale price determined by the Authority for the specified period of time.

## I. DEFINITIONS

For purposes of this Agreement, the following terms shall be defined as follows:

"Affordable Housing" shall mean residential units that have been restricted for occupancy by Households whose total Gross Annual Income is measured at less than 80% of the median income level established by an authorized income guideline for geographic region and family size.

"Agency" shall mean the New Jersey Housing and Mortgage Finance Agency established by L. 1983, c.530 (C. 55:14K-1 et seq.).

"Agreement" shall mean this written Affordable Housing

Agreement between the Authority and the owner of an Affordable Housing unit which places restrictions on Affordable Housing units so that they remain affordable to and occupied by Low and Moderate Income-Eligible Households for the period of time specified in this agreement.

"Assessments" shall mean all taxes, levies or charges, both public and private, including those charges by any condominium, cooperative or homeowner's association as the applicable case may be, imposed upon the Affordable Housing unit.

"Authority" shall mean the administrative organization designated by municipal ordinance for the purpose of monitoring the occupancy and resale restrictions contained in this Affordable Housing Agreement. The Authority shall serve as an instrument of the municipality in exercising the municipal rights to the collection of funds as contained in this Agreement.

"Base Price" shall mean the initial sales price of a unit produced for or designated as owner-occupied Affordable Housing.

"Council" shall mean the Council on Affordable Housing (COAH) established pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

"Certified Household" shall mean any eligible Household whose estimated total Gross Annual Income has been verified, whose financial references have been approved and who has received written certification as a Low or Moderate Income-Eligible Household from the Authority.

"Department" shall mean the New Jersey State Department of Community Affairs.

"Exempt Transaction" shall mean the following "non-sales" title transactions: (1) Transfer of ownership between husband and wife; (2) Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation (but not including sales to third parties); (3) Transfer of ownership through an Executor's deed to a Class A Beneficiary; and, (4) Transfer of ownership by court order. All other title transfers shall be deemed non-exempt.

"Fair Market Price" shall mean the unrestricted price of a low or moderate income housing unit if sold at a current real estate market rate.

"First Purchase Money Mortgage" shall mean the most senior mortgage lien to secure repayment of funds for the purchase of an Affordable Housing unit providing that such mortgage is not in excess of the applicable maximum allowable resale price and is payable to a valid First Purchase Money Mortgagee.

"First Purchase Money Mortgagee" shall mean an institu-

lender or investor, licensed or regulated by the Federal or a State government or any agency thereof, which is the holder and/or assigns of the First Money Mortgage.

**"Foreclosure"** shall mean the termination through legal processes of all rights of the mortgagor or the mortgagor's heirs, successors, assigns or grantees in a restricted Affordable Housing unit covered by a recorded mortgage.

**"Gross Annual Income"** shall mean the total amount of all sources of a Household's income including, but not limited to salary, wages, interest, tips, dividends, alimony, pensions, social security, business and capital gains, tips and welfare benefits. Generally, gross annual income will be based on those sources of income reported to the Internal Revenue Service (IRS) and/or that can be utilized for the purpose of mortgage approval.

**"Hardship Walver"** shall mean an approval by the Authority to sell an affordable unit to a household that exceeds the income eligibility criteria after the Owner has demonstrated that no Certified Household has signed an agreement to purchase the unit. The Owner shall have marketed the unit for 90 days after a Notice of Intent to Sell has been received by the Authority and the Authority shall have 30 days thereafter to approve a Hardship Walver. The Hardship Walver shall permit a low income unit to be sold to a moderate income household or a moderate income unit to be sold to a household whose income is at 80% or above the applicable median income guide. The Hardship Walver is only valid for a single sale.

**"Household"** shall mean the person or persons occupying a housing unit.

**"Index"** shall mean the measured percentage of change in the median income for a Household of four by geographic region using the income guideline approved for use by Council.

**"Low Income Household"** shall mean a Household whose total Gross Annual Income is equal to 50% or less of the median gross income figure established by geographic region and household size using the income guideline approved for use by Council.

**"Moderate Income Household"** shall mean a Household whose total Gross Annual Income is equal to more than 50% but less than 80% of the median gross income established by geographic region and household size using the income guideline approved for use by Council.

**"Owner"** shall mean the title holder of record as same is reflected in the most recently dated and recorded deed for the particular Affordable Housing unit. For purposes of the initial sales or rentals of any Affordable Housing unit, Owner shall include the developer/owner of such Affordable Housing units. Owner shall not include any co-signer or co-borrower on any First Purchase Money Mortgage unless such co-signer or co-borrower is also a named title holder of record of such Affordable Housing unit.

**"Price Differential"** shall mean the total amount of the restricted sales price that exceeds the maximum restricted resale price as calculated by the Index after reasonable real estate broker fees have been deducted. The unrestricted sales price shall be no less than a comparable fair market price as determined by the Authority at the time a Notice of Intent to Sell has been received from the Owner.

**"Primary Residence"** shall mean the unit wherein a Certified Household maintains continuing residence for no less than nine months of each calendar year.

**"Purchaser"** shall mean a Certified Household who has signed an agreement to purchase an Affordable Housing unit subject to a mortgage commitment and closing.

**"Repayment"** shall mean the Owner's obligation to the municipality for payment of 95% of the price differential between maximum allowable resale price and the fair market selling price which has accrued to the Affordable unit during the restricted period of resale at the first non-exempt sale of the property after restrictions have ended as specified in the Affordable Housing Agreement.

**"Repayment Mortgage"** shall mean the second mortgage document signed by the Owner that is given to the municipality as security for the payment due under the Repayment Note.

**"Repayment Note"** shall mean the second mortgage note signed by the Owner that requires the repayment to the municipality of 95% of the price differential which has accrued to the low or moderate income unit during the period of resale controls at the first non-exempt sale of the property after restrictions have ended as specified in the Affordable Housing Agreement.

**"Resale Price"** shall mean the Base Price of a unit designated as owner-occupied affordable housing as adjusted by the Index. The resale price may also be adjusted to accommodate an approved home improvement.

**"Total Monthly Housing Costs"** shall mean the total of the following monthly payments associated with the cost of an owner-occupied Affordable Housing unit including the mortgage payment (principal, interest, private mortgage insurance), applicable assessments by any homeowners, condominium, or cooperative associations, real estate taxes, and fire, theft and liability insurance.

## II. PROPERTY DESCRIPTION

This agreement applies to the Owner's interest in the real property commonly known as:

Block 406 Lot 22.19  
Municipality NEWARK  
County ESSEX # of Bedrooms 2  
Complete Street Address and Unit Number:  
49A WICKLIFFE STREET (22J1)  
City NEWARK  
State NJ Zip 07103

If additional Affordable Housing units are to be covered by this Agreement, a description of each additional unit is attached as Exhibit A and is incorporated herein.

## III. TERM OF RESTRICTION

A. The terms, restrictions and covenants of this Affordable Housing Agreement shall begin on the later of the date a Certificate of Occupancy is issued or the date on which closing and transfer of title takes place for initial ownership.

B. The terms, restrictions and covenants of this Affordable Housing Agreement shall terminate upon the occurrence of either of the following events:

1. At the first non-exempt sale after 10 (ten) years from the beginning date established pursuant to Paragraph A above for units located in municipalities receiving State Aid pursuant to P.L. 1978, L.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:92-5.3(b); or at the first non-exempt sale after 20 (twenty) years from the beginning date established pursuant to Paragraph A above for units located in all other municipalities; or

2. The date upon which the event set forth in Section IX FORECLOSURE herein shall occur.

terms, restrictions and covenants of the Affordable

#### V. REQUIREMENTS

Agreement may be extended by municipal resolution as provided for in N.J.A.C. 5:92.1 et seq. Such municipal resolution shall provide for a period of extended restrictions and shall be effective upon filing with the Council and the Authority. The municipal resolution shall specify the extended time period by providing for a revised ending date. An amendment to the Affordable Housing Agreement shall be filed with the recording office of the county in which the Affordable Housing unit or units is/are located.

D. At the first non-exempt title transaction after the established ending date, the Authority shall execute a document in recordable form evidencing that the Affordable Housing unit has been released from the restrictions of this Affordable Housing Agreement.

#### IV. RESTRICTIONS

A. The Owner of an owner-occupied Affordable Housing unit for sale shall not sell the unit at a Resale Price greater than an established Base Price plus the allowable percentage of increase as determined by the Index applicable to the municipality in which the unit is located. However, in no event shall the approved resale price be established at a lower level than the last recorded purchase price.

B. The Owner shall not sell the Affordable Housing unit to anyone other than a Purchaser who has been certified utilizing the income verification procedures established by the Authority to determine qualified Low and Moderate Income-Eligible Households.

C. An Owner wishing to enter a transaction that will terminate controls as specified heretofore in Section III TERM OF RESTRICTION shall be obligated to provide a Notice of Intent to Sell to the Authority and the Council. An option to buy the unit at the maximum restricted sales price as calculated by the Index shall be made available to the Municipality, the Department, the Agency, or a qualified non-profit organization as determined by the Council for a period of ninety (90) days from the date of delivery of the Notice of Intent to Sell. The option to buy shall be by certified mail and shall be effective on the date of mailing to the Owner.

1. If the option to buy is not exercised within ninety (90) days pursuant to Paragraph C above, the Owner may elect to sell the unit to a certified income-eligible household at the maximum restricted sales price as calculated by the Index provided the unit continues to be restricted by an Affordable Housing Agreement and a Repayment Note for a period of up to twenty (20) years.

2. Alternately, the Owner may also elect to sell to any purchaser at a fair market price. In this event, the Owner shall be obligated to pay the municipality 95% of the Price Differential generated at the time of closing and transfer of title of the Affordable Housing unit after restrictions have ended as specified heretofore in Section III TERM OF RESTRICTION.

3. If the Owner does not sell the unit within one (1) year of the date of delivery of the Notice of Intent to Sell, the option to buy shall be restored to the municipality and subsequently to the Department, the Agency or a Non-Profit approved by the Council. The Owner shall then be required to submit a new Notice of Intent to Sell the affordable unit to the Authority.

D. The Affordable Housing unit shall be sold in accordance with all rules, regulations, and requirements duly promulgated by the Council (N.J.A.C. 5:92-1 et seq.), the intent of which is to ensure that the Affordable Housing unit remains affordable to and occupied by Low and Moderate Income-Eligible Households throughout the duration of this Agreement.

A. This Agreement shall be recorded with the recording office of the county in which the Affordable Housing unit or units are located. The Agreement shall be filed no earlier than the recording of an applicable Master Deed and no later than the closing date of the initial sale.

B. When a single Agreement is used to govern more than one Affordable Housing unit, the Agreement shall contain a description of each Affordable Housing unit governed by the Agreement as described in Section II PROPERTY DESCRIPTION and/or Exhibit A of the Agreement and an ending date to be imposed on the unit as described in Section III TERM OF RESTRICTION of the Agreement.

C. A Repayment Mortgage and a Repayment Note shall be executed between the Owner and the municipality wherein the unit(s) is/are located at the time of closing and transfer of title to any purchaser of an Affordable Housing Unit. The Repayment Mortgage shall provide for the repayment of 95% of the Price Differential at the first non-exempt transfer of title after the ending date of restrictions as specified in Section III TERM OF RESTRICTION. The Repayment Mortgage shall be recorded with the records office of the County in which the unit is located.

#### VI. DEEDS OF CONVEYANCE AND LEASE PROVISIONS

All Deeds of Conveyance and Contracts to Purchase from all Owners to Certified Purchasers of Affordable Housing units shall include the following clause in a conspicuous place.

"The Owner's right, title and interest in this unit and the use, sale, resale and rental of this property are subject to the terms, conditions, restrictions, limitations and provisions as set forth in the AFFORDABLE HOUSING AGREEMENT dated 2/28/94 which is filed in the Office of the County Clerk of ESSEX County and is also on file with the Authority".

Any Master Deed that includes an Affordable Housing unit shall also reference the affordable unit and the Affordable Housing Agreement and any variation in services, fees, or other terms of the Master Deed that differentiates the affordable unit from all other units covered in the Master Deed.

#### VII. COVENANTS RUNNING WITH LAND

The provisions of this Affordable Housing Agreement shall constitute covenants running with the land with respect to each Affordable Housing unit affected hereby, and shall bind all Purchasers and Owners of each Affordable Housing unit, their heirs, assigns and all persons claiming by, through or under their heirs, executors, administrators and assigns for the duration of this Agreement as set forth herein.

#### VIII. OWNER RESPONSIBILITIES

In addition to fully complying with the terms and provisions of this Affordable Housing Agreement, the Owner acknowledges the following responsibilities:

A. Affordable Housing units shall at all times remain the Primary Residence of the Owner. The Owner shall not rent any Affordable Housing unit to any party whether or not that party qualifies as a Low or Moderate Income household without prior written approval from the Authority.

B. All home improvements made to an Affordable Housing Unit shall be at the Owner's expense except that expenditures for any alteration that allows a unit to be resold to a larger household size because of an increased capacity for occupancy shall be con-

sidered for a recalculation of Base Price. Owners must obtain prior approval for such alteration from the Authority to qualify for this recalculation.

C. The Owner of an Affordable Housing unit shall keep the Affordable Housing unit in good repair.

D. Owners of Affordable Housing units shall pay all taxes, charges, assessments or levies, both public and private, assessed against such unit, or any part thereof, as and when the same become due.

E. Owners of Affordable Housing units shall notify the Authority in writing no less than ninety (90) days prior to any proposed sale of an intent to sell the property. Owners shall not execute any purchase agreement, convey title or otherwise deliver possession of the Affordable Housing unit without the prior written approval of the Authority.

F. An Owner shall request referrals of eligible households from pre-established referral lists maintained by the Authority.

G. If the Authority does not refer an eligible household within sixty (60) days of the Notice of Intent to Sell the unit or no Agreement to Purchase the unit has been executed, the Owner may propose a Contract to Purchase the unit to an eligible household not referred through the Authority. The proposed Purchaser must complete all required Household Eligibility forms and submit Gross Annual Income Information for verification to the Authority for written certification as an eligible sales transaction.

H. At resale, all items of property which are permanently affixed to the unit and/or were included when the unit was originally restricted (e.g. refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included in the maximum allowable Resale Price. Other items of property may be sold to the Purchaser at a reasonable price that has been approved by the Authority at the time of signing the Agreement to Purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the Base Price may be made a condition of the unit resale provided the price has been approved by the Authority. Unless otherwise permitted by the Council, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The Owner and the Purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at Resale.

I. The Owner shall not permit any lien, other than the First Purchase Money Mortgage, second mortgages approved by the Authority and liens of the Authority to attach and remain on the property for more than sixty (60) days.

J. If an Affordable Housing unit is part of a condominium, homeowner's or cooperative association, the Owner, in addition to paying any assessments required by the Master Deed of the Condominium or By-laws of an Association, shall further fully comply with all of the terms, covenants or conditions of said Master Deed or By-Laws, as well as fully comply with all terms, conditions and restrictions of this Affordable Housing Agreement.

K. The Owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and regulations duly promulgated by the Council (N.J.A.C. 5:92-1 et seq.), for determining that a resale transaction is qualified for a Certificate of Exemption. The Owner shall notify the Authority in writing of any proposed Exempt Transaction and supply the necessary documentation to qualify for a Certificate of Exemption. An Exempt Transaction does not terminate the resale restrictions or existing liens and is not considered a certified sales transaction in calculating subsequent resale prices. A Certificate of Exemption shall be

filled with the deed at the time of title transfer.

L. The Owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and regulations duly promulgated by the Council (N.J.A.C. 5:92-1 et seq.), for determining that a resale transaction is qualified for a Hardship Waiver. The Owner may submit a written request for a Hardship Waiver if no Certified Household has executed an agreement to purchase within ninety (90) days of notification of an approved resale price and referral of potential purchasers. Prior to issuing a Hardship Waiver, the Municipality shall have 30 days in which to sign an agreement to purchase the unit at the approved resale price and subsequently rent or convey it to a Certified Household. The Municipality may transfer this option to the Department, the Agency, or a qualified non-profit organization as determined by the Council. For approval of a Hardship Waiver, an Owner must document efforts to sell the unit to an income eligible household. If the waiver is granted, the Owner may offer a low income unit to a moderate income household or a moderate income unit to a household whose income exceeds 80% of the applicable median income guide. The Hardship Waiver shall be recorded with the deed at the time of closing and is only valid for the designated resale transaction. It does not affect the resale price. All future resales are subject to all restrictions stated herein.

M. The Owner shall be obligated to pay a reasonable service fee to the Authority at the time of closing and transfer of title in the amount specified by the Authority at the time a restricted resale price has been determined after receipt of a Notice of Intent to Sell. Such fee shall not be included in the calculation of the maximum resale price.

## IX. FORECLOSURE

The terms and restrictions of this Agreement shall be subordinate only to the First Purchase Money Mortgage lien on the Affordable Housing property and in no way shall impair the First Purchase Money Mortgagee's ability to exercise the contract remedies available to it in the event of any default of such mortgage as such remedies are set forth in the First Purchase Money Mortgage documents for the Affordable Housing unit.

Any Affordable Housing owner-occupied property that is acquired by a First Purchase Money Mortgagee by Deed in lieu of Foreclosure, or by a Purchaser at a Foreclosure sale conducted by the holder of the First Purchase Money Mortgagee shall be permanently released from the restrictions and covenants of this Affordable Housing Agreement. All resale restrictions shall cease to be effective as of the date of transfer of title pursuant to Foreclosure with regard to the First Purchase Money Mortgagee, a lender in the secondary mortgage market including but not limited to the FNMA, Federal Home Loan Mortgage Corporation, GNMA, or an entity acting on their behalf and all subsequent purchasers, Owners and mortgagees of that particular Affordable Housing unit (except for the defaulting mortgagor, who shall be forever subject to the resale restrictions of this Agreement with respect to the Affordable Housing unit owned by such defaulting mortgagor at time of the Foreclosure sale).

Upon a judgment of Foreclosure, the Authority shall execute a document to be recorded in the county recording office as evidence that such Affordable Housing unit has been forever released from the restrictions of this Agreement. Execution of foreclosure sales by any other class of creditor or mortgagee shall not result in a release of the Affordable Housing unit from the provisions and restrictions of this Agreement.

In the event of a Foreclosure sale by the First Purchase

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the defaulting mortgagor shall be personally obligated to pay to the Authority any excess funds generated from such foreclosure sale. For purposes of this agreement, excess funds shall be the total amount paid to the sheriff by reason of the Foreclosure sale in excess of the greater of (1) the maximum permissible Resale Price of the Affordable Housing unit as of the date of the Foreclosure sale pursuant to the rules and guidelines of the Authority and (2) the amount required to pay and satisfy the First Money mortgage, including the costs of Foreclosure plus any second mortgages approved by the Authority in accordance with this Agreement. The amount of excess funds shall also include all payments to any junior creditors out of the Foreclosure sale proceeds even if such were to the exclusion of the defaulting mortgagor.

The Authority is hereby given a first priority lien, second only to the First Purchase Money Mortgagee and any taxes or public assessments by a duly authorized governmental body, equal to the full amount of such excess funds. This obligation of the defaulting mortgagor to pay the full amount of excess funds to the Authority shall be deemed to be a personal obligation of the Owner of record at time of the Foreclosure sale surviving such sale. The Authority shall be empowered to enforce the obligation of the defaulting mortgagor in any appropriate court of law or equity as though same were a personal contractual obligation of the defaulting mortgagor. Neither the First Purchase Money Mortgagee nor the purchaser at the Foreclosure sale shall be responsible or liable to the Authority for any portion of this excess.

No part of the excess funds, however, shall be part of the defaulting mortgagor's equity.

The defaulting mortgagor's equity shall be determined to be the difference between the maximum permitted Resale Price of the Affordable Housing unit as of the date of the Foreclosure sale as calculated in accordance with this Agreement and the total of the following sums: First Purchase Money Mortgage, prior liens, costs of Foreclosure, assessments, property taxes, and other liens which may have been attached against the unit prior to Foreclosure, provided such total is less than the maximum permitted Resale Price.

If there are Owner's equity sums to which the defaulting mortgagor is properly entitled, such sums shall be turned over to the defaulting mortgagor or placed in an escrow account for the defaulting mortgagor if the defaulting mortgagor cannot be located. The First Purchase Money Mortgagee shall hold such funds in escrow for a period of two years or until such earlier time as the defaulting mortgagor shall make a claim for such. At the end of two years, if unclaimed, such funds, including any accrued interest, shall become the property of the Authority to the exclusion of any other creditors who may have claims against the defaulting mortgagor.

Nothing shall preclude the municipality wherein the Affordable Housing unit is located from acquiring an affordable property prior to foreclosure sale at the approved maximum Resale price and holding, renting or conveying it to a Certified Household if such right is exercised within 90 days after the property is listed for sale and all outstanding obligations to the First Purchase Money Mortgagee are satisfied.

#### X. VIOLATION, DEFAULTS AND REMEDIES

In the event of a threatened breach of any of the terms of this Agreement by an Owner, the Authority shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance, it being recognized by both parties to this

Agreement that a breach will cause irreparable harm to the Authority, in light of the public policies set forth in the Fair Housing Act and the obligation for the provision of low and moderate income housing. Upon the occurrence of a breach of any of the terms of the Agreement by an Owner, the Authority shall have all remedies provided at law or equity, including but not limited to foreclosure, acceleration of all sums due under the mortgage, recoupment of any funds from a sale in violation of the Agreement, injunctive relief to prevent further violation of the Agreement, entry on the premises, and specific performance.

#### XI. RIGHT TO ASSIGN

The Authority may assign from time to time its rights, and delegate its obligations hereunder without the consent of the Owner. Upon such assignment, the Authority, its successors or assigns shall provide written notice to the Owner.

#### XII. INTERPRETATION OF THIS AGREEMENT

The terms of this Agreement shall be interpreted so as to avoid financial speculation or circumvention of the purposes of the Fair Housing Act for the duration of this Agreement and to ensure, to the greatest extent possible, that the purchase price, mortgage payments and rents of designated Affordable Housing units remain affordable to Low and Moderate Income-Eligible Households as defined herein.

#### XIII. NOTICES

All notices required herein shall be sent by certified mail, return receipt requested as follows:

To the Owner:

At the address of the property stated in Section II PROPERTY DESCRIPTION hereof.

To the Authority:

At the address stated below:

Department of Community Affairs  
Affordable Housing Management Services  
Cn 806 Room 335  
Trenton, New Jersey 08625-0806  
**Attention: Program Manager**

Or such other address that the Authority, Owner, or municipality may subsequently designate in writing and mail to the other parties.

#### XIV. SUPERIORITY OF AGREEMENT

Owner warrants that no other Agreement with provisions contradictory of, or in opposition to, the provisions hereof has been or will be executed, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations between and among the Owner, the Authority, and their respective successors.

#### XV. SEVERABILITY

It is the intention of all parties that the provisions of this instrument are severable so that if any provisions, conditions, covenants or restrictions thereof shall be invalid or void under any applicable federal, state or local law, the remainder shall be unaffected thereby.

In the event that any provision, condition, covenant or restriction hereof, is at the time of recording of this instrument, void, voidable or unenforceable as being contrary to any applicable

